

**IN THE COURT OF THE ADDL. CIVIL JUDGE AND
JMFC., AT GOWRIBIDANUR**

Dated this the 08th day of April 2022

**PRESENT:- Sri. MANJUNATHA CAHARI D.K., B.A.,
L.L.B.,**

**Addl. Civil Judge and JMFC.,
Gowribidanur.**

ORIGINAL SUIT NO.44/2011

PLAINTIFFS: Sri. Hanumaiah and another

(Rep. by Sri. B.L., Advocate)

-Vs-

DEFENDANTS: Sri. Narayanappa and others

(Rep. by Sri. SVR., Advocate)

I.A. FILED U/O 6 RULE 17 OF CPC

Sri. Narayanappa .. APPLICANTS/DEFENDANTS.

- V/S -

Sri. Hanumaiah and another .. OPPONENTS/PLAINTIFFS.

H 8/4

**ORDERS ON I.A. FILED BY DEFENDANT NO.1 UNDER
ORDER 6 RULE 17 R/W SEC.151 OF C.P.C. ON
27.04.2019.**

The defendants/applicants sought for amendment in the written statement in the manner indicated herein their application.

2. The Plaintiffs have filed this suit for permanent injunction in respect of suit schedule property. The defendants already have filed their written statement to contest the matter. After the suit has been posted for defendant's evidence, thereafter this application was filed by defendants No.1 to 4. The plaintiffs have filed objection and contended that the application was filed belated stage. This application in order to drag the proceedings and if the application is allowed the entire nature of the written statement will be changed, Hence they have prayed to dismiss the application with cost.

3. Heard from both the side on IA and perused the documents available on the record.

4. The points that would arise for my consideration are:

8/4

1. Whether the application filed by the defendants deserve to be allowed?

2. What Order?

5. My findings to the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : As per the final order for the following:

REASONS

6. **Point No.1:-** This is a suit filed by the plaintiffs against the defendants for the relief of permanent injunction in respect of suit schedule property and other reliefs. The present application is preferred by defendants to permit them to amend the written statement by way of deleting the Second para in page No.3 of the written statement and in the same place inserting the facts narrated in the application.

7. The relevant decision for the present application is **Baldev Singh & Ors. Etc vs Manohar Singh & Anr. Etc on 3 August, 2006, Supreme Court of India, has held:** *Let us now take up the last ground on which the application for amendment of the written statement*

H 8/4

was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. **That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of**

8/4

action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

8. In view of the above decision, the Apex Court held that, a new ground of defense or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Therefore, inconsistent defenses can be raised in the written statement although the same may not be permissible in case of plaint. Hence, in above material aspects the application of defendants to amend their written statement is fit to be allowed.

9. The Court has also relied the following decision in

Handwritten signature and date 8/4

Akshaya Restaurant vs P. Anjanappa And Anr on 27 March, 1995, Hon'ble Supreme Court of India held as here under:

We find no force in the contention. It is settled law that even the admission can be explained and even inconsistent pleas could be taken in the pleadings. It is seen that in paragraph 6 of the written statement definite stand was taken but subsequently in the application for amendment, it was sought to be modified as indicated in the petition. In that view of the matter, we find that there is no material irregularity committed by the High Court in exercising its power under Section 115 C.P.C. in permitting amendment of the written statement.

10. Therefore, in considering the above rulings to this matter, the defendant has stated in the affidavit that the documents as to new facts are come to the knowledge of him in recently and he has further stated that the new facts were not pleaded at the time of filing of written statement. The defendant has made out due diligence not to implead the new facts at the time of presenting written statement and they have a right to explain their admission and take away the inconsistent facts from the pleadings. **Hence, I answered point No.1 in the Affirmative.**

JA 8/4

11. Point No.2:- For the foregoing reasons assigned, the Court proceeds to pass the following:

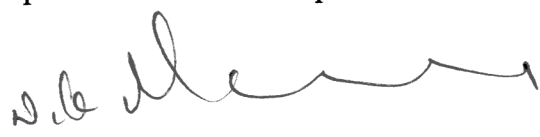
ORDER

The IA filed by the defendants under order 6 rule 17 r/w Sec.151 of CPC is hereby allowed.

The applicants/defendants are hereby directed to carryout necessary amendment in written statement and file an amended written statement on 02-06-2022

No order as to cost.

(Dictated to the Stenographer directly on computer, computerized by her, corrected, revised and then pronounced in the open Court on this the 08th day of April 2022)


(MANJUNATHA CHARI. D.K.)
Addl. Civil Judge and JMFC.,
Gowribidanur.

8/4